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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Christopher Charles McCormick

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4264

22897

7590

10/26/2007

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EXAMINER

WRIGHT, PATRICIA KATHRYN

ART UNIT

PAPER NUMBER

1797

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/668,688	<b>Applicant(s)</b> MCCORMICK ET AL.	
	<b>Examiner</b> P. Kathryn Wright	<b>Art Unit</b> 1797	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20,22-32 and 34-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20,22-32 and 34-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

1. Applicant's Response, filed 10 August 2007, has been fully considered. Any objection/rejection not repeated herein has been withdrawn by the Office.

### *Claim Rejections - 35 USC § 102/103*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 20, 24, 26-29, 31-32, 34, 37 and 39 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schuller (US Patent no. 6,882,980).

Schuller teaches a chemical product commerce network. Specifically, Schuller teaches a computer system with purchasers (clients) connected through a server to a database containing chemical data for chemicals to be purchased, and a purchasing system, where the clients can purchase batches of the chemicals in the database (e.g., raw materials; see col. 4, line 27, et seq.)

Schuller also teaches that the purchaser enter a requirement or target characteristic information in the system (see col. 4, line 45, et seq.). The data system compares the requirement (target characteristic) to known product and formulation characteristics (i.e., analyses) previously stored in a database 125 (see col. 4, lines 47-59).

With respect to the wherein clause in claim 20 which requires that the analyses are obtained from testing facility in accordance to a uniform standard, it is expected that,

in order to do the comparison the products are compared using a uniform standard for an accurate determination between the two analyses. However, if not, it would have been obvious to one of ordinary skill in the art to provide a uniform standard for an accurate determination between the two analyses.

With respect to the inclusion of a plurality of supplier's batch information being stored in the database, and available for testing of those products, it would appear that Schuller anticipates this feature. See for example, where Schuller teaches multiple suppliers as well as multiple purchasers (column 3, line 14, et seq.) and multiple vendors contributing to the one database of product-related information (column 6, lines 56-67). As Schuller has already discussed independent testing by the intermediate, it would appear that such testing would have been available in this multiple vendor embodiment. However, if not, it would have been obvious to make such testing available in a multi-user/vendor system as an independent way to verify product information supplied, as well as to expand upon it.

### ***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included here can be found above.
8. Claims 22, 23, 25, 30, 35, 36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuller.

Schuller does not specifically teach:

- Outputting statistics to a subscriber,
- Pricing below a normal selling price,

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- Specifically providing no information about vendor to the purchaser, and
- Ranking products based on a criteria.

One of the advantages of a database, is the storing of historical data, as well as the ability to mine that data for all types of information, including trends. It would have been obvious to one having ordinary skill in the art to employ the services of a statistician to organize historical database information in a manner useful to the owner, as well as the users of that database.

With respect to sale items, it is in the best interest of a purchaser to determine the reasons for a sale on a particular item, and to ensure an acceptable level of quality for all his purchases. It would have been obvious to one having ordinary skill in the art to perform quality testing on any item offered for sale below an average selling price to determine if it meets the minimum standards required by the purchaser.

With respect to "white-washing" the vendor information, the best testing is done "blind" so that no name-brand influence can occur. It would have been obvious to one having ordinary skill in the art to test the products blindly in order to eliminate any brand name influence.

With respect to product ranking, again, this is one of the advantages of using a database. Data is easily reorganized to provide statistical analysis. It would have been obvious to one having ordinary skill in the art to list product analysis in an order from most desirable to least desirable given the specifications provided by the purchaser for easy viewing of the analysis. Such amounts to a ranking of the products.

***Response to Arguments***

9. Applicant's arguments filed August 10, 2007 have been fully considered but they are not persuasive. With respect to the previous rejection of claims 20, 24, 26-29, 31-32, 34, 37 and 39 under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schuller (US Patent no. 6,882,980), Applicant argues there is no teaching or suggestion that the system of Schuller receives a "requirement" as defined in applicant's disclosure. Furthermore, Applicant argues that the system of Schuller does not teach a comparison between the requirement and the product the user wants to purchase.

The Examiner respectfully disagrees that the system of Schuller fails to teach a requirement and no comparison between the requirement and the product the user wants to purchase. First, the limitation "requirement" is not defined in the independent claims. USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. Limitations appearing in the specification but not recited in the claim should not be read into the claim. Claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily. See MPEP 2106 [R-5]. Nevertheless, the Examiner asserts that Schuller does teach a system which receives a "requirement" (i.e., target characteristic information) from the user. The target characteristic information includes a range of properties such as, binding and opacity, which is then compared to the known properties stored in the data base of Schuller. This comparison can be done by measuring a difference between user-specified target characteristics and the stored characteristics. Therefore, Schuller does, in fact, teach a data system which receives a

requirement from a user and compares this requirement and the product the user wants to purchase.

Applicant also argues there is no teaching or suggestion that a product is for sale in the system of Schuller or that the product is available from at least two different suppliers. The Examiner does not agree since Schuller teaches the system can complete order processing from different warehouse sites (i.e., different suppliers) to the purchaser (see, for example, col. 4, lines 26, et seq.) Therefore, the Schuller data system does teach multiple suppliers which sell batches of product (includes raw material and completed product) to the purchaser.

### ***Conclusion***

10. No claims are allowed.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Wright whose telephone number is 571-272-



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2374. The examiner can normally be reached on Monday thru Thursday, 9 AM to 6 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 24, 2007

pkw

LYLE A. ALEXANDER  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to be 'LAX', is written below the printed name of the examiner.